



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 20, 2019

CASE NUMBER: 2019OPA-0744

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Force Review Unit forwarded this case to OPA, alleging that the Named Employees' warrantless search of the Subject's apartment may have violated Seattle Police Department (SPD) policy and the Subject's rights.

### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

##### ***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement***

On June 24, 2019, Named Employee #1 (NE#1) and Named Employee (NE#2) responded to a call reporting a suspected fraud. On arrival, NE#1 and NE#2 contacted the Victim at his door. The Victim, whose statement to officers was captured on Body Worn Video (BWV), explained that over the past few days he had received a large number of emails from Amazon, indicating that \$900 in purchases had been charged to his account. The Victim said that he did not make those charges. The Victim stated that the purchases were all listed as deliverable to a unit two doors down from his. He stated that his nephew, who lives with him, and his niece, who had formerly lived in the same apartment complex, both had access to his Amazon account and were permitted to order items. The Victim theorized that the resident of the unit two doors down from him—the Subject in this case—obtained the password from one of them. He stated that he had never given the Subject his password and did not know her well, but that the Subject had a high opinion of his niece.



He showed NE#1 and NE#2 a list of items purchased, including a cellular phone. NE#1 indicated to the Victim that he and NE#2 were familiar with the Subject, and that she had been intoxicated in prior interactions with them.

NE#1 and NE#2 went to the Subject's apartment. When he walked by the open window, NE#2 saw the Subject resting on her bed, which was near the window. He waved at her and asked if she would open the door to speak with them. While the Subject went to her door, NE#2 said to NE#1: "dude, dude, the stuff is right there." NE#2 pointed inside the Subject's window, which was open, at various items of property which were visible on her bed and bedside table.

NE#1 met the Subject at her door and asked if he and NE#2 could step inside to speak with her. The Subject agreed. NE#1 and NE#2 walked inside, and NE#1 asked the Subject where she had obtained the items in her apartment. The Subject said that she had obtained them from Amazon, and when asked how she ordered them she indicated an Amazon Fire tablet which was sitting on her bed. NE#1 asked if the tablet was hers, and the Subject said that it was. NE#1 asked if anyone had given her the tablet, and the Subject said that "[the niece]" did. She further stated that the niece gave her permission to order items on Amazon. NE#1 stated that he found this difficult to believe, because the total cost of the items ordered amounted to nearly \$1,000 and were charged to another person's card. NE#1 further informed the Subject that he saw items matching those listed on the orders in the Subject's apartment. The Subject became upset, stated that she had permission to make the orders, and also stated that she thought the orders had been made on her card. While speaking to the Subject, NE#1 did not enter any rooms beside the one the subject was in and did not open any containers or closets.

NE#1 went to speak to the Victim. The Victim called his niece, who spoke to NE#1 over the phone. BWV captured NE#1's portion of the conversation. Speaking to the niece, NE#1 confirmed that she did not give the Subject permission to order items on Amazon and did not gift the tablet to her, but rather loaned it. NE#1 also established that the Amazon Fire was owned by the Victim.

NE#1 returned to the Subject's apartment, where NE#2 was waiting with the Subject. NE#1 asked the Subject to stand and arrested the Subject with the assistance of NE#2. NE#1 handcuffed the Subject and double-locked the cuffs. The Subject requested that certain personal items, including her phone, go to jail with her. NE#1 and NE#2 agreed and walked the Subject to the patrol vehicle, which was approximately 25 yards from the apartment door. NE#1 and NE#2 left the door open and it remained in their view while they walked to the vehicle. The Subject, who was pulling at the cuffs, complained of handcuff discomfort and NE#1 and NE#2 advised her not to pull at the cuffs.

After placing the Subject in the patrol vehicle, NE#2 returned to the subject's apartment and seized certain items that the Subject had ordered from Amazon. When he returned to the car with the items, NE#1 said that "she already gave us permission in there, so I'm going to take photos." NE#1 re-entered the apartment and took photographs of the interior. The total time between when NE#1 left the apartment with the Subject and when he returned to take photographs was approximately five to six minutes. NE#1 returned to the patrol vehicle and assisted NE#2 in bagging the items of property they had removed from the Subject's apartment for evidence purposes. After bagging evidence, NE#1 returned to the Subject's apartment door to shut it. Immediately after, he and NE#2 transported the Subject to the North Precinct.

SPD Policy 6.180-POL-2 concerns searches and seizures, including entries into residences. It specifically references the various exceptions to the search warrant requirement. One such exception is where consent is given for the search. (SPD Policy 6.180-POL-2(a).) Consent must be given voluntarily and not coerced, and the consenting person must have authority to consent to the search. (*Id.*)



Based on its analysis of this incident, OPA determined that the Named Employees did not violate SPD policy related to warrantless searches. BWV showed that NE#1 initially received the Subject's consent to enter the front room of her apartment and speak with her. There is no indication that either NE#1 or NE#2 in any way coerced the Subject to open her door and to allow them inside. Case law in Washington holds that officers who enter a suspect's home by consent may seize contraband items in plain view, provided they do not enter solely as a pretext to search for contraband without obtaining a warrant. *State v. Khounvichai*, 149 Wn.2d 557, 564 (2003). Based on the Victim's statements that the Amazon orders in question were being delivered to the Subject's apartment, NE#1 and NE#2 already had a legitimate investigatory reason to speak to the Subject prior to going to her apartment and seeking her consent to enter. Accordingly, they did not create the reason for speaking to her as a pretext to conduct a warrantless search. BWV recorded NE#2 identifying items matching those described by the Victim through an open window. Further, it did not show that NE#1 or NE#2 ever left the front room, or at any point exceeded the limits of consent provided by the Subject. Rather, all the items seized by NE#1 and NE#2 as evidence were plainly visible in the front room from the moment they entered to speak with the Subject.

In OPA's opinion, NE#1 and NE#2 also did not exceed the scope of the Subject's consent by returning and photographing items in the front room of her apartment before closing her door. A "second search" that takes place mere minutes after a consented-to entry is one continuous search of the home. *See State v. Gallo*, 20 Wn. App. 717, 725 (1978). Accordingly, OPA believes that NE#1 and NE#2 were permitted to take the actions that they did.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

Recommended Finding: **Not Sustained (Lawful and Proper)**

#### **Named Employee #2 - Allegation #1**

##### ***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement***

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**